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Supreme Court, U. S.
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Supreme Court of the United States.

OCTOBER TERM, 1937.

No. 182.

A. HOWARD MYERS ET AL., *Petitioners*,

v.

CHARLES MACKENZIE ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

BRIEF FOR RESPONDENTS.

ALEXANDER G. GOULD,
Attorney for Respondents.

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[illegible],
Of Counsel.

INDEX.

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statute involved	2
Statement	2
Summary of argument	7
Argument	8
I. The National Labor Relations Board and the petitioners exceeded the authority granted them by the National Labor Relations Act in seeking to exercise jurisdiction over the Fore River Plant of the Bethlehem Shipbuilding Corporation, Ltd.	8
II. The District Court had jurisdiction in equity to issue a preliminary injunction	13
III. The granting of the temporary injunction should not be disturbed on appeal unless it is contrary to some rule of equity or is the result of an improvident exercise of judicial discretion	19
Conclusion	19

TABLE OF AUTHORITIES CITED.

Associated Press v. National Labor Relations Board, 301 U.S. 103	9, 11
Borax Consolidated v. City of Los Angeles, 296 U.S. 10	17
Crowell v. Benson, 285 U.S. 22	17
Euclid v. Ambler Realty Co., 272 U.S. 365	18
Meccano, Ltd., v. Wanamaker, 253 U.S. 136	19
Miller v. Standard Nut Margarine Co., 284 U.S. 498	18
National Labor Relations Board v. Friedman-Harry Marks Clothing Co., 301 U.S. 58	9, 11

	Page
National Labor Relations Board v. Fruehauf Trailer Co., 301 U.S. 49	9, 11
National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U.S. 1	9, 10, 11
Pierce v. Society of Sisters, 268 U.S. 510	18
Prendergast v. New York Telephone Co., 262 U.S. 43	18, 19
Richert Rice Mills v. Fontenot, 297 U.S. 110	18
Rogers v. Hill, 289 U.S. 582	19
Terrace v. Thompson, 263 U.S. 197	18
Truax v. Raich, 239 U.S. 33	18
Washington, Virginia & Maryland Coach Co. v. National Labor Relations Board, 301 U.S. 142	9, 11
Judicial Code, section 240 (a) as amended by the Act of February 13, 1925	2
National Labor Relations Act, Act of July 5, 1935, c. 372, 49 Stat. 449, U.S.C. Sup. II, Title 29, secs. 151-166	2, 3, 7, 8, 9, 10, 11, 12, 14, 16, 17
National Labor Relations Act, Sec. 2 (6) and (7)	3, 4, 9
National Labor Relations Act, Sec. 8 (1) and (2)	3
National Labor Relations Act, Sec. 10 (a)	8
National Labor Relations Act, Sec. 10 (b)	15
National Labor Relations Board, Sec. 10 (f)	16, 17

Supreme Court of the United States.

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No. 182.

A. HOWARD MYERS et al., *Petitioners,*

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On Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit.

BRIEF FOR RESPONDENTS.

Opinions Below.

The opinion or memorandum of the District Court for the District of Massachusetts in this suit upon the granting of a preliminary injunction (R. 222, 117) is not reported. The opinion of the District Court upon the petitioners' motion to dismiss, which is not involved in this appeal, is reported in 15 F. Supp. 915 (R. 225, 118). The opinion of the Circuit Court of Appeals for the First Circuit (R. 229) is reported in 88 F. (2d) 154. The opinion of the Circuit Court denying the petitioners' motion for leave to file a second petition for rehearing (R. 242) is reported in 89 F. (2d) 1000.

Jurisdiction.

The decree of the Circuit Court of Appeals was entered on February 12, 1937 (R. 232). A petition for rehearing by the petitioners was denied on April 5, 1937 (R. 236), and a motion for leave to file a second petition for rehearing (R. 236) was denied on May 13, 1937 (R. 243). The petition for writ of certiorari was filed herein June 30, 1937, and was granted October 11, 1937 (R. 245). The jurisdiction of this Court is invoked under section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

Question Presented.

The question presented to this Court in this case is whether the District Court violated any rule of equity or abused its discretion in granting the preliminary injunction, the granting of which was affirmed on appeal by the Circuit Court.

Statute Involved.

The National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U.S.C. Sup. II, Title 29, secs. 151-166) is printed in the record (pp. 17-27 of pamphlet following R. 214). The rules and regulations made by the National Labor Relations Board are printed in the record (pp. 1-16 of pamphlet following R. 214).

Statement.

The statement of the various proceedings in this case set forth in detail in the brief for the petitioners will not be repeated. The allegations of fact made in the respondents' bill of complaint as amended (R. 151), supported

by the affidavits filed in this suit and the affidavits filed in *A. Howard Myers et al.* v. *Bethlehem Shipbuilding Corporation, Ltd.*, No. 181 (R. 86-110, 167-181, 182-189), which it was agreed could be considered in this case (R. 190), were found to be true by the District Court (R. 219, 111). These allegations will be set forth at some length in order that the facts in this case may be clearly presented to this Court.

In April, 1936, as the result of charges made by the Industrial Union of Marine & Shipbuilding Workers of America, Local No. 5, the petitioner, A. Howard Myers, as Acting Regional Director of the First Region of the National Labor Relations Board, issued a complaint (R. 31) against the Bethlehem Shipbuilding Corporation, Ltd., charging the Bethlehem Corporation with dominating and interfering with a labor organization known as the Plan for the Representation of Employees in its Plant at Fore River, Massachusetts. The complaint charged the Bethlehem Corporation in the conduct of its business at the Fore River Plant was causing large quantities of raw materials to be shipped into Massachusetts from other states and caused the product of its Fore River Plant to be sold and transported in interstate commerce from Massachusetts to other states, and was engaging in unfair labor practices within the meaning of section 8, sub-divisions (1) and (2), and section 2, sub-divisions (6) and (7), of the National Labor Relations Act. The sections of the Act referred to are as follows:

> "Sec. 8. It shall be an unfair labor practice for an employer—
>
> "(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7."
>
> ("Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organiza-

tions, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.")

"(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: Provided, That subject to rules and regulations made and published by the Board pursuant to section 6(a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of pay."

"Sec. 2. When used in this Act—

. . . . . .

"(6) The term 'commerce' means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

"(7) The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."

The respondents are respectively the Chairman, Vice-Chairman and Secretary of the General Body, a group elected by and from all of the employees in the Fore River Plant of the Bethlehem Shipbuilding Corporation, Ltd., under a Plan for the Representation of Employees in the

Fore River Plant. The respondents are employees of the Bethlehem Shipbuilding Corporation, Ltd., at the Fore River Plant and bring this bill of complaint as amended (R. 152) in their own behalf and as the officers of the General Body of the Representation of Employees in the Fore River Plant by the authority of a vote of the General Body (R. 166).

The Bethlehem Shipbuilding Corporation, Ltd., at its Fore River Plant, is engaged in designing and fabricating vessels of various sizes and descriptions. Practically all of the materials used in the construction of a vessel are fabricated at the Fore River Plant, including the boilers and main propelling machinery for each vessel (R. 88, 89). The vessels are delivered to the purchaser at the Fore River Plant (R. 97). Ninety-seven and one-half per cent (97½%) of the business of the Bethlehem Corporation at the Fore River Plant is the designing and building of vessels (R. 97).

The respondents and approximately 5000 other persons are employed in the Fore River Plant, and are engaged in the designing and fabrication of vessels. This work is all performed within Massachusetts. They are employed under oral contracts which govern their rates of pay, wages, hours of employment and working conditions. These contracts were entered into in Massachusetts, and are to be performed entirely within Massachusetts (R. 155, pars. 8, 9). Their employment is a wholly intrastate activity and the employees are not engaged in interstate commerce (R. 162, par. 25) or in occupations which directly burden, obstruct or affect interstate commerce (R. 162, par. 26).

Prior to 1923 and prior to the adoption of the Plan for the Representation of Employees, there were frequent strikes and walkouts by groups of employees in various departments of the Fore River Plant which interfered with and disrupted the operation of the Plant (R. 90). In 1923

the Plan for the Representation of Employees in the Fore River Plant was adopted, with the result that since its adoption in 1923 all questions arising between the employees and the Bethlehem Shipbuilding Corporation, Ltd., in the Fore River Plant have been amicably settled without any labor disturbances or interruption in the operation of the Plant (R. 91, 156, 168, 170, 173, 176). Through the Plan for the Representation of Employees there have developed and there now exist harmonious relations between the employees and the management which have resulted in continuous operation and steady employment in the Fore River Plant (R. 156, 168, 171, 173, 177). The employees nominate and elect representatives from their number who constitute the General Body under the Plan for the Representation of Employees (R. 155). The General Body negotiates with the management of the Bethlehem Shipbuilding Corporation, Ltd., on all questions concerning rates of pay, wages, hours of employment and working conditions (R. 156). Ninety-six per cent (96%) of the employees eligible to vote participated in the last annual election (R. 174). All employees eighteen (18) years of age or older who have been on the payroll sixty (60) days prior to the election, and who are not officials of the Bethlehem Shipbuilding Corporation, Ltd., or persons having the right to recommend the hiring and discharge of employees, are eligible to vote (R. 155, 156, pars. 10, 11).

The terms of the respondents' and the other employees' contracts of employment covering rates of pay, wages, hours of employment and working conditions have been determined by negotiation through the operation of the Plan for the Representation of Employees. The respondents and the employees whom they represent are satisfied with their existing contracts of employment and desire to retain the Plan for the Representation of Employees now in existence without change (R. 138, par. 17; R. 177, 178).

The holding of the proposed hearing by the National Labor Relations Board on the complaint charging the Bethlehem Shipbuilding Corporation, Ltd., with unfair labor practices in negotiating with the employees in the Fore River Plant through the Plan for the Representation of Employees will discredit the Plan and destroy its usefulness to the employees (R. 169, 174). The employees will be deprived of their right to negotiate by the method of their choice, which has been proved by years of operation. Alteration of the Plan for the Representation of Employees will cause dissatisfaction among the employees and there will be labor disturbances. The operation of the Plant will be disrupted by labor disturbances and employment will be interrupted. The damage to the respondents will be irreparable (R. 159, pars. 18, 19, 20, 21).

Summary of Argument.

The respondents contend that the District Court violated no rule of equity and did not abuse its discretion in granting a preliminary injunction. The operation of the Fore River Plant of the Bethlehem Shipbuilding Corporation, Ltd., and the employment of the respondents in that Plant is clearly beyond the jurisdiction of the National Labor Relations Board. It is the further contention of the respondents that the allegations of fact in the bill of complaint, supported by the affidavits filed herein, state a case for equitable relief and that the respondents were threatened with irreparable damage by the holding of the proposed hearing for which there was no plain, adequate and complete remedy at law. The damage which the respondents will suffer from the holding of the hearing is such that the remedies afforded by the National Labor Relations Act are inadequate.

Argument.

I.

The National Labor Relations Board and the petitioners exceeded the authority granted them by the National Labor Relations Act in seeking to exercise jurisdiction over the Fore River Plant of the Bethlehem Shipbuilding Corporation, Ltd.

The Bethlehem Shipbuilding Corporation, Ltd., at its Fore River Plant in Quincy and Weymouth, Massachusetts, is engaged in the design and construction of vessels of various sizes and descriptions. The materials used in the construction of the vessels are cut, shaped and in other ways processed at the Plant to become component parts of the vessels. The completed vessels are delivered to the purchasers at Fore River and by them taken to their destination. The respondents and some five thousand other persons are employed at the Fore River Plant. They are engaged in the operation of the Plant and perform all their duties there. The contracts of employment are made and performed within the Commonwealth of Massachusetts.

The jurisdiction of the National Labor Relations Board is defined by the National Labor Relations Act, the provisions of which pertinent to the jurisdiction of the Board in this case are as follows:

> "Sec. 10 (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise."

"Commerce" and "affecting commerce" are defined by the Act as follows:

"Sec. 2. When used in this Act—

. . . . . .

"(6) The term 'commerce' means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory or the District of Columbia, or within the District of Columbia or any Territory or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

"(7) The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."

This Court has decided that the National Labor Relations Act can be construed so as to operate within the sphere of constitutional authority and is a valid exercise of the powers of Congress under the Constitution. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1; *National Labor Relations Board* v. *Fruehauf Trailer Co.*, 301 U.S. 49; *National Labor Relations Board* v. *Friedman-Harry Marks Clothing Co.*, 301 U.S. 58; *Associated Press* v. *National Labor Relations Board*, 301 U.S. 103; *Washington, Virginia & Maryland Coach Co.* v. *National Labor Relations Board*, 301 U.S. 142.

There can be no question that in the National Labor Relations Act Congress has sought to extend the exercise of its power under the Constitution farther than ever before. This Court has recognized the extension of this exercise of power in the above cases. That there is a very real limit to the exercise of the power of Congress under the National Labor Relations Act was recognized by this Court in its

opinion in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp., supra.* This Court did not there attempt to define that limit. It said, on page 30:

> "The authority of the Federal Government may not be pushed to such an extreme as to destroy the distinction which the commerce clause itself establishes, between commerce 'among the several States' and the internal concerns of a State. That distinction between what is national and what is local in the activities of commerce is vital to the maintenance of our Federal system."

The principles governing the determination of whether in a particular instance the application of the National Labor Relations Act would be within the power of Congress were stated by this Court on page 37 of the same opinion:

> "Although activities may be intrastate in character when separately considered, if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions, Congress cannot be denied the power to exercise that control. Undoubtedly the scope of this power must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government. The question is necessarily one of degree."

An examination of the operations of the companies over which this Court has decided the National Labor

Relations Board has jurisdiction and to which the National Labor Relations Act may be applied as a constitutional exercise of the power of Congress will assist in determining whether the operation of the Fore River Plant of the Bethlehem Shipbuilding Corporation, Ltd., is such as to bring it within the jurisdiction of the National Labor Relations Board. In *Associated Press* v. *National Labor Relations Board, supra,* the Associated Press in gathering and distributing news between the states was actively engaged in interstate commerce. In *Washington, Virginia & Maryland Coach Co.* v. *National Labor Relations Board, supra,* the company was an instrumentality of interstate commerce transporting passengers and express for hire between the District of Columbia and the State of Virginia. In *National Labor Relations Board* v. *Friedman-Harry Marks Clothing Co., supra,* the company purchased cloth and materials from outside the state and manufactured men's clothing which was sold to customers outside the state. Similarly the company involved in the case of *National Labor Relations Board* v. *Fruehauf Trailer Co., supra,* was engaged in the manufacture of trailers, the materials for which came from outside the state. The company maintained sales offices in several states and shipped a large proportion of the trailers to customers in other states. The Jones & Laughlin Steel Corporation as described in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp., supra,* manufactures and sells steel and iron. It and its subsidiaries constitute an integrated enterprise extending into many states, operating its own mines, railroad line and finishing plants.

The Fore River Plant of the Bethlehem Shipbuilding Corporation, Ltd., in its operation is unlike any of the above-described companies. From raw materials the completed vessels are fabricated at Fore River and are delivered to the purchasers at Fore River. In the cases which

this Court has held the National Labor Relations Act to apply, the company involved has been either actually engaged in interstate commerce or its operations have involved the use of materials from outside the state and the sale or delivery of the finished product outside the state. The record in this case discloses nothing which shows there are any interstate transactions in the operations of the Fore River Plant. Even to hold that the National Labor Relations Act may be applied to companies selling and delivering their products within the state would extend the power of Congress to almost every factory or company engaged in manufacturing in the United States. The only effect on interstate commerce which the cessation of operation of such a company caused by a labor disturbance might have would be, to the extent that the company might make use of materials coming from outside the state, to diminish or retard the transportation of such materials into the state. If the operation of such companies is held to have such a close and substantial relation to interstate commerce that their control by Congress is essential to protect that commerce, then the operations of every retail store in the country which might sell merchandise coming from outside the state must, by the same principles, be within the control of Congress. Whether the company employs five or five thousand, the result must be the same. The principle is the same.

The respondents contend, therefore, that under no constitutional extension of the power of Congress can the National Labor Relations Act apply to the Bethlehem Shipbuilding Corporation, Ltd., at its Fore River Plant. The National Labor Relations Board in issuing the complaint in this case was clearly exceeding its powers and authority. The Circuit Court in its opinion on the petitioners' motion for leave to file a petition for rehearing in this case (R. 243) said:

"It is obvious that the business here in question as described in the finding of the District Judge is very different in character from the "far flung" enterprises of the Jones & Laughlin Steel Corporation or from the essentially interstate businesses involved in National Labor Relations Board v. Friedman-Harry Marks Clothing Co. and National Labor Relations Co. v. Fruehauf Trailer Co. In applying the test laid down in the Jones & Laughlin opinion to individual business organizations some uncertainty as to which are under Federal control in their relations with their employees and which under state control will at first be unavoidable. When the question is raised, as in this case, we think it devolves on the National Labor Relations Board to show that the business involved is probably within its jurisdiction. On the findings of the District Judge, that fact is not established in the present case."

II.

The District Court had jurisdiction in equity to issue a preliminary injunction.

The respondents are all employees of the Bethlehem Shipbuilding Corporation, Ltd., at the Fore River Plant. They are the Chairman, Vice-Chairman and Secretary of the General Body of the Representation of Employees in the Fore River Plant. They are the representatives elected by the employees in the Plant for the purpose of negotiating with the management of the Plant in all controversies concerning rates of pay, wages, hours of employment and working conditions. The respondents represent the approximately five thousand employees in the Fore River Plant and bring this bill of complaint under the authority of a vote of the General Body.

The Plan for the Representation of Employees was adopted in 1923, and since its adoption all controversies arising between the employees and the management in the Fore River Plant have been successfully adjusted through the operation of the Plan. There has been no cessation of either employment or operation of the Plant resulting from a failure of the employees and the management to amicably reach a satisfactory agreement on any controversy which has arisen in the Plant since 1923.

The complaint issued by the National Labor Relations Board and the petitioners herein charges the Bethlehem Shipbuilding Corporation, Ltd., at the Fore River Plant, is engaging in certain unfair labor practices as defined by the Act and is dominating and interfering with the Plan for the Representation of Employees. The complaint further alleges the business of the Fore River Plant constitutes a continuous flow of trade, traffic and commerce among the several states and is therefore under the jurisdiction of the National Labor Relations Board.

The complaint, although nominally directed against the Bethlehem Corporation, is in reality an indictment by the National Labor Relations Board of the Plan for the Representation of Employees. The respondents and the employees in the Fore River Plant believe that the Plan for the Representation of Employees provides a satisfactory and successful means of negotiating with the management. This belief is based on many years of successful operation of the Plan during which they have had continuous employment uninterrupted by labor disputes. Their present contracts of employment are satisfactory and the terms of these contracts involving rates of pay, wages, hours of employment and working conditions have been obtained through the operation of the Plan. They know from experience that the Plan will enable them to successfully negotiate any controversies which may arise. They do not

want the Plan changed, because it represents the method of negotiation of their own choice.

If the petitioners hold the proposed hearing on the complaint which they have issued, the Plan for the Representation of Employees in effect will be placed on trial and the charge that the Plan is unfair to the employees will inevitably raise questions and doubts in the minds of the employees as to whether the Plan is fair and whether the Board will permit the Bethlehem Shipbuilding Corporation, Ltd., to negotiate with the employees through the Plan. The effectiveness of any method of negotiation between employees and management must depend upon the confidence of the employees and the management that the Plan is fair and will operate successfully. This confidence now exists. The holding of the hearing will destroy the confidence which years of practical application has developed. The employees will be deprived of the benefit and advantage they now enjoy from the Plan.

If the Plan ceases to be an effective means of negotiating the settlement of controversies which arise, the employees will be faced with the same conditions which existed before the adoption of the Plan in 1923. Unsettled controversies will lead to interruption of the operations in parts of the Plant which will affect the operations and employment in other parts of the Plant. The damage threatened to the respondents will be irreparable. The charges which caused the issuance of the complaint were not made in response to any request by the employees or by any organization with which the employees are affiliated. This fact was considered by the District Court in making its decision (R. 123).

Under section 10 (b) of the Act the respondents may be allowed to intervene in any proceeding brought by the Board, but this is entirely a matter of discretion with the Board or its agents. The respondents as a matter of right

cannot participate in any hearing the Board may hold on the complaint. Whether they may or may not participate under this section of the Act is purely discretionary with the Board.

The Act provides that any person aggrieved by the final order of the Board may obtain a review of the orders by the Circuit Court of Appeals. See section 10 (f). The damage threatened to the respondents will have become an accomplished fact before they can assert any right to have the order of the Board reviewed by the Circuit Court. The Act does not permit the review by the Circuit Court of the decision of the Board as to its jurisdiction before the Board completes the hearing on the complaint. In no way under the Act may the question of the jurisdiction of the Board be raised until after the Board has completed the hearings on the complaint and made its order. The damage threatened to the respondents will result from the holding of the hearing. The remedy which the Act affords the respondents can be exercised only after the hearing on the complaint has been completed. There is, therefore, no remedy available to the respondents under the Act which will be plain, adequate or complete.

The District Court found the allegations of fact in the respondents' bill of complaint to be true. It expressed grave doubts as to the constitutionality of the National Labor Relations Act but did not decide that question. The Act has since been held constitutional by this Court, but there are definite limits to its constitutional application. The grave doubts expressed by the District Court must still exist as to the constitutional application of the Act to the Fore River Plant of the Bethlehem Shipbuilding Corporation, Ltd. The damage threatened to the respondents as alleged in the bill of complaint is real and substantial. The remedy of the respondents under the Act is of no value to the respondents. Faced with damage which is ir-

reparable, their only remedy is a resort to the equity powers of the District Court to prevent the holding of the hearing until a court can determine on all the evidence whether the National Labor Relations Board and these petitioners have any authority under the National Labor Relations Act and within the power of Congress under the Constitution to issue a complaint against the Bethlehem Shipbuilding Corporation, Ltd., and to hold a hearing on such a complaint.

The respondents submit they have a right to contest the jurisdiction of the Board before the hearing on the complaint. As was said by this Court in *Borax Consolidated* v. *City of Los Angeles*, 296 U.S. 10, 18:

> "Petitioners' argument in substance is that while the United States was powerless as against the State to pass title to tidelands in the absence of a survey, the question whether or not the land was tideland would be foreclosed by a departmental survey, although erroneous. This contention encounters the principle that the question of jurisdiction, that is, of the competency of the Department to act upon the subject matter, is always one for judicial determination."

This Court has recognized that Congress, in delegating powers to an administrative body, cannot deprive the United States Courts of the power to determine the facts upon which the administrative body predicates its jurisdiction. The right to have the question of the jurisdiction of an administrative body decided by a judicial tribunal cannot be taken away by Congress. *Crowell* v. *Benson*, 285 U.S. 22. The petitioners contend that right is preserved in the National Labor Relations Act by section 10 (f). The respondents submit that where the holding of the hearing threatens irreparable damage in a case where the Board has no jurisdiction, as in the case at bar, the District Court

has jurisdiction in equity to restrain the holding of the hearing until the question of the jurisdiction of the Board may be determined.

There is jurisdiction in equity to enjoin the enforcement of an unconstitutional law where immediate and irreparable injury is threatened and there is no plain, adequate or complete remedy at law. This has been frequently recognized in the case of unconstitutional state statutes. *Terrace* v. *Thompson,* 263 U.S. 197; *Truax* v. *Raich,* 239 U.S. 33; *Pierce* v. *Society of Sisters,* 268 U.S. 510; *Euclid* v. *Ambler Realty Co.,* 272 U.S. 365. The power of the District Court to enjoin the collection of an illegal assessment of a tax has been recognized. *Miller* v. *Standard Nut Margarine Co.,* 284 U.S. 498. A District Court may enjoin the collection of an illegal tax. *Richert Rice Mills* v. *Fontenot,* 297 U.S. 110.

It is clear that the balance of injury should be considered in connection with the issuance of the temporary injunction in this case. *Prendergast* v. *New York Telephone Co.,* 262 U.S. 43, 50. If the balance of injury to the respondents and the petitioners resulting from the granting or denial of a temporary injunction is to be considered, certainly that balance must be decided in favor of the respondents and the granting of the temporary injunction. The petitioners will suffer no injury from having the question of the jurisdiction of the National Labor Relations Board determined before a hearing is held on the complaint. If the Court shall decide the petitioners had no jurisdiction, much time and expense will be saved by the petitioners and the respondents. If the Court shall decide the Board has jurisdiction, no time or expense will have been wasted, because the Board would have to hear evidence on the question of jurisdiction which would undoubtedly be the same evidence presented to the Court.

III.

The granting of the temporary injunction should not be disturbed on appeal unless it is contrary to some rule of equity or is the result of an improvident exercise of judicial discretion.

The issuance of a preliminary injunction is within the discretion of the District Court. On appeal the issuance of a temporary injunction by a District Court will not be disturbed unless the District Court in granting the temporary injunction abused this discretion or violated some rule of equity. *Prendergast* v. *New York Telephone Co., supra; Meccano, Ltd.*, v. *Wanamaker*, 253 U.S. 136; *Rogers* v. *Hill*, 289 U.S. 582, 587. The respondents contend the District Court in this case did not violate any rule of equity or abuse its discretion in issuing the temporary injunction. The Circuit Court in sustaining the District Court has so held.

Conclusion.

The respondents submit that the decree of the Circuit Court should be affirmed.

Respectfully submitted,

ALEXANDER G. GOULD,
Attorney for Respondents.

B. A. Brickley,
Oliver R. Waite,
Brickley, Sears & Cole,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

Nos. 181 and 182.—October Term, 1937.

181 A. Howard Myers, et al., Petitioners, *vs.* Bethlehem Shipbuilding Corporation, Ltd.

182 A. Howard Myers, et al., Petitioners, *vs.* Charles MacKenzie, et al.

On Certiorari to the United States Circuit Court of Appeals for the First Circuit.

[January 31, 1938.]

Mr. Justice Brandeis delivered the opinion of the Court.

The question for decision is whether a federal district court has equity jurisdiction to enjoin the National Labor Relations Board from holding a hearing upon a complaint filed by it against an employer alleged to be engaged in unfair labor practices prohibited by National Labor Relations Act, July 5, 1935, c. 372, 49 Stat. 449. The Circuit Court of Appeals for the First Circuit held in these cases that the District Court possesses such jurisdiction; and granted preliminary injunctions. Every other Circuit Court of Appeals in which the question has arisen has held the contrary.[1] Because of the importance of the questions presented, the conflict in the lower courts and alleged conflict with our own decisions, we granted these writs of certiorari (302 U. S. —).

The declared purpose of the National Labor Relations Act is to diminish the causes of labor disputes burdening and obstructing interstate and foreign commerce; and its provisions are applicable only to such commerce. In order to protect it the Act seeks to promote collective bargaining; confers upon employees engaged in such commerce the right to form, and join in, labor organizations; defines

[1] E. I. Dupont de Nemours & Co. *v.* Boland, 85 F. (2d) 12 (C. C. A. 2); Newport News Shipbuilding & Dry Dock Co. *v.* Schauffler, 91 F. (2d) 730 (C. C. A. 4); Bradley Lumber Co. *v.* National Labor Relations Board, 84 F. (2d) 97 (C. C. A. 5); Clark *v.* Lindemann & Hoverson Co., 88 F. (2d) 59 (C. C. A. 7); Pratt *v.* Oberman & Co., Inc., 89 F. (2d) 786 (C. C. A. 8); Heller Bros. Co. *v.* Lind, 86 F. (2d) 862 (App. D. C.); compare Bowen *v.* James Vernor Co., 89 F. (2d) 968 (C. C. A. 6); Carlisle Lumber Co. *v.* Hope, 83 F. (2d) 92 (C. C. A. 9); Lyons *v.* Eagle-Picher Lead Co., 90 F. (2d) 321 (C. C. A. 10).

acts of an employer which shall be deemed unfair labor practice; and confers upon the Board certain limited powers with a view to preventing such practices. If a charge is made to the Board that a person "has engaged in or is engaging in any . . . unfair labor practice", and it appears that a proceeding in respect thereto should be instituted, a complaint stating the charge is to be filed, and a hearing is to be held thereon upon notice to the person complained of.

The Industrial Union of Marine and Shipbuilding Workers of America, Local No. 5, made to the Board a charge that the Bethlehem Shipbuilding Corporation, Ltd.,[2] was engaging in unfair labor practices at its plant in Quincy, Massachusetts, for the production, sale and distribution of boats, ships, and marine equipment. Upon that charge the Board filed, on April 13, 1936, a complaint which alleged, among other things, that the company dominates and interferes in the manner described "with a labor organization known as Plan of Representation of Employees in Plants of the Bethlehem Shipbuilding Corporation, Ltd."; that such action leads to strikes interfering with interstate commerce; and that "the aforesaid acts of respondent constitute unfair labor practices affecting commerce, within the meaning of Section 8, subdivisions (1) and (2) and Section 2, subdivisions (6) and (7) of said [National Labor Relations] Act."

The complaint alleged, specifically:

"The respondent in the course and conduct of its business causes and has continuously caused large quantities of the raw materials used in the production of its boats, ships and marine equipment to be purchased and transported in interstate commerce from and through states of the United States other than the State of Massachusetts to the Fore River Plant in the State of Massachusetts, and causes and has continuously caused the boats, ships and marine equipment produced by it to be sold and transported in interstate commerce from the Fore River Plant in the State of Massachusetts to, into and through states of the United States other than the State of Massachusetts, all of the aforesaid constituting a continuous flow of trade, traffic and commerce among the several states."

The Board duly notified the Corporation that a hearing on the complaint would be held on April 27, 1936, at Boston, Massachu-

[2] A Delaware corporation, with its principal place of business at Bethlehem, Pennsylvania.

setts, in accordance with Rules and Regulations of the Board, a copy of which was annexed to the notice; and that the Corporation "will have the right to appear, in person or otherwise, and give testimony."

On that day the Corporation filed, in the federal court for Massachusetts, the bill in equity, herein numbered 181, against A. Howard Myers, Acting Regional Director for the First Region, National Labor Relations Board, Edmund J. Blake, its Regional Attorney for the First Region, and Daniel M. Lyons, Trial Examiner, to enjoin them from holding "a hearing for the purpose of determining whether or not the plaintiff has engaged at its Fore River Plant in any so-called unfair labor practices under the National Labor Relations Act, and from having any proceedings or taking any action whatsoever, at any time or times, with respect thereto." There were prayers for a restraining order, an interlocutory injunction and a permanent injunction; and, also, a prayer that the court declare that the National Labor Relations Act and "defendants' actions and proposed actions thereunder" violate the Federal Constitution.

On May 4, 1936, another bill in equity, herein numbered 182, against the same defendants, seeking, on largely the same allegations of fact, substantially the same relief, was brought in the same court by Charles MacKenzie, James E. Manning and Thomas E. Barker, employees of the Bethlehem Corporation and officers of the so-called Plan of Representation at the Fore River Plant.[3]

Upon the filing of each bill, the District Court issued a restraining order and an order of notice to show cause why a preliminary injunction should not issue. In each case the defendants filed a motion to dismiss the bill of complaint and also a return to the order to show cause. The cases were heard together. In each, the District Court issued the preliminary injunction; and the decrees therefor are still in effect. They were affirmed by the Circuit Court of Appeals for the First Circuit on February 12, 1937. 88 F. (2d) 154. Petitions for a rehearing, based upon the conflict with the decisions of other circuit courts of appeals were denied. And the court denied also motions for leave to file a second petition for rehearing, based upon the decisions of this Court in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, and other cases rendered April 12, 1937. 89 F. (2d) 1000. The District Court,

[3] A substituted bill of complaint was filed May 7, 1936.

denied the motions to dismiss the bills. 15 F. Supp. 915. But the review by the Circuit Court of Appeals dealt only with the decrees for a preliminary injunction.

The two cases present, in the main, the same questions. In discussing them reference will be made, in the first instance, only to the suit brought by the Corporation.

We are of opinion that the District Court was without power to enjoin the Board from holding the hearings.

First. There is no claim by the Corporation that the statutory provisions and the rules of procedure prescribed for such hearings are illegal; or that the Corporation was not accorded ample opportunity to answer the complaint of the Board; or that opportunity to introduce evidence on the allegations made will be denied. The claim is that the provisions of the Act are not applicable to the Corporation's business at the Fore River Plant, because the operations conducted there are not carried on, and the products manufactured are not sold, in interstate or foreign commerce; that, therefore, the Corporation's relations with its employees at the plant cannot burden or interfere with such commerce; that hearings would, at best, be futile; and that the holding of them would result in irreparable damage to the Corporation, not only by reason of their direct cost and the loss of time of its officials and employees, but also because the hearings would cause serious impairment of the good will and harmonious relations existing between the Corporation and its employees, and thus seriously impair the efficiency of its operations.[4]

Second. The District Court is without jurisdiction to enjoin hearings because the power "to prevent any person from engaging in any unfair practice affecting commerce", has been vested by Congress in the Board and the Circuit Court of Appeals, and Congress has declared: "This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise."[5]

[4] It is alleged that in 1934 and 1935 the predecessor of the present National Labor Relations Board instituted somewhat similar action against the Corporation. Although the proceedings were eventually dismissed, the hearings consumed a total of some 2500 hours of working time of officials and employees and cost the Corporation more than $15,000, none of which could be recovered.

[5] Compare House Committee Report, H. R. Rep. 1147, 74th Cong., 1st Sess., p. 24: "any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may claim a review of such order in the appropriate circuit court of appeals, or in the Court of Appeals

The grant of that exclusive power is constitutional, because the Act provided for appropriate procedure before the Board and in the review by the Circuit Court of Appeals an adequate opportunity to secure judicial protection against possible illegal action on the part of the Board. No power to enforce an order is conferred upon the Board. To secure enforcement, the Board must apply to a Circuit Court of Appeals for its affirmance. And until the Board's order has been affirmed by the appropriate Circuit Court of Appeals, no penalty accrues for disobeying it. The independent right to apply to a Circuit Court of Appeals to have an order set aside is conferred upon any party aggrieved by the proceeding before the Board. The Board is even without power to enforce obedience to its subpoena to testify or to produce written evidence. To enforce obedience it must apply to a District Court; and to such an application appropriate defence may be made.[6]

As was said in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 46, 47, the procedural provisions,

"do not offend against the constitutional requirements governing the creation and action of administrative bodies. See Interstate Commerce Commission *v.* Louisville & Nashville R. Co., 227 U. S. 88, 91. The Act establishes standards to which the Board must conform. There must be complaint, notice and hearing. The Board must receive evidence and make findings. The findings as to the facts are to be conclusive, but only if supported by evidence. The order of the Board is subject to review by the designated court, and only when sustained by the court may the order be enforced. Upon that review all questions of the jurisdiction of the Board and the regularity of its proceedings, all questions of constitutional right or statutory authority, are open to examination by the court. We construe the procedural provisions as affording adequate opportunity to secure judicial protection against arbitrary action in accordance with the well settled rules applicable to administrative agencies set up by Congress to aid in the enforcement of valid legislation."

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of the District of Columbia. It is intended here to give the party aggrieved a full, expeditious, and exclusive method of review in one proceeding after a final order is made. Until such final order is made the party is not injured, and cannot be heard to complain, as has been held in cases under the Federal Trade Commission Act."

[6]See Section 11 of the Act and Article II, Sections 20 and 21, of the Rules and Regulations issued April 27, 1936. Compare Federal Trade Commission *v.* Claire Furnace Co., 274 U. S. 160; E. I. Dupont de Nemours & Co. *v.* Boland, 85 F. (2d) 12 (C. C. A. 2).

It is true that the Board has jurisdiction only if the complaint concerns interstate or foreign commerce. Unless the Board finds that it does, the complaint must be dismissed. And if it finds that interstate or foreign commerce is involved, but the Circuit Court of Appeals concludes that such finding was without adequate evidence to support it, or otherwise contrary to law, the Board's petition to enforce it will be dismissed, or the employer's petition to have it set aside will be granted.[7] Since the procedure before the Board is appropriate and the judicial review so provided is adequate, Congress had power to vest exclusive jurisdiction in the Board and the Circuit Court of Appeals. *Anniston Manufacturing Co.* v. *Davis*, 301 U. S. 337, 343-346.

Third. The Corporation contends that, since it denies that interstate or foreign commerce is involved and claims that a hearing would subject it to irreparable damage, rights guaranteed by the Federal Constitution will be denied unless it be held that the District Court has jurisdiction to enjoin the holding of a hearing by the Board.[8] So to hold would, as the Government insists, in effect substitute the District Court for the Board as the tribunal to hear and determine what Congress declared the Board exclusively should hear and determine in the first instance. The contention is at war with the long settled rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted.[9] That rule has been repeatedly acted on in cases where, as here, the con-

[7] Section 10 (f) of the Act provides: "Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive."

[8] In support of that contention the following cases were cited: Ohio Valley Water Co. *v.* Ben Avon Borough, 253 U. S. 287, 289; Bluefield Co. *v.* Public Service Commission, 262 U. S. 679, 683; Phillips *v.* Commissioner, 283 U. S. 589, 600; Crowell *v.* Benson, 285 U. S. 22, 60, 64; State Corporation Commission *v.* Wichita Gas Co., 290 U. S. 561, 569; St. Joseph Stock Yards Co. *v.* United States, 298 U. S. 38, 51-52.

[9] The rule has been most frequently applied in equity where relief by injunction was sought. Pittsburgh &c. Ry. *v.* Board of Public Works, 172 U. S. 32, 44-45; Prentis *v.* Atlantic Coast Line Co., 211 U. S. 210, 230; Dalton Adding Machine Co. *v.* State Corporation Commission, 236 U. S. 699, 701; Gorham Mfg. Co. *v.* State Tax Commission, 266 U. S. 265, 269-70; Federal Trade Commission *v.* Claire Furnace Co., 274 U. S. 160, 174; Lawrence *v.* St. Louis-San Francisco Ry. Co., 274 U. S. 588, 592-93; Chicago, M., St. P.

tention is made that the administrative body lacked power over the subject matter.[10]

Obviously, the rule requiring exhaustion of the administrative remedy cannot be circumvented by asserting that the charge on which the complaint rests is groundless and that the mere holding of the prescribed administrative hearing would result in irreparable damage.[11] Lawsuits also often prove to have been groundless; but no way has been discovered of relieving a defendant from the necessity of a trial to establish the fact.

Fourth. The Circuit Court of Appeals should have reversed the decrees for a preliminary injunction. It is true that ordinarily the decree of a District Court granting or denying a preliminary injunction will not be disturbed on appeal. But that rule of practice has no application where, as here, there was an insuperable

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& P. R. R. Co. *v.* Risty, 276 U. S. 567, 575; St. Louis-San Francisco Ry. Co. *v.* Alabama Public Service Commission, 279 U. S. 560, 563; Porter *v.* Investors Syndicate, 286 U. S. 461, 468, 471; United States *v.* Illinois Central Ry. Co., 291 U. S. 457, 463-64; Hegeman Farms Corp. *v.* Baldwin, 293 U. S. 163, 172; compare Red "C" Oil Mfg. Co. *v.* North Carolina, 222 U. S. 380, 394; Farncomb *v.* Denver, 252 U. S. 7, 12; Milheim *v.* Moffat Tunnel District, 262 U. S. 710, 723; McGregor *v.* Hogan, 263 U. S. 234, 238; White *v.* Johnson, 282 U. S. 367, 374; Petersen Baking Co. *v.* Bryan, 290 U. S. 570, 575; Pacific Tel. & Tel. Co. *v.* Seattle, 291 U. S. 300, 304. But because the rule is one of judicial administration—not merely a rule governing the exercise of discretion—it is applicable to proceedings at law as well as suits in equity. Compare First National Bank *v.* Board of County Commissioners, 264 U. S. 450, 455; Anniston Mfg. Co. *v.* Davis, 301 U. S. 337, 343.

10 Dalton Adding Machine Co. *v.* State Corporation Commission, 236 U. S. 699; Federal Trade Commission *v.* Claire Furnace Co., 274 U. S. 160; Lawrence *v.* St. Louis-San Francisco Ry. Co., 274 U. S. 588; St. Louis-San Francisco Ry. Co. *v.* Alabama Public Service Commission, 279 U. S. 560; compare Western & Atlantic R. R. *v.* Georgia Public Service Commission, 267 U. S. 493, 496, and cases cited in note 1, *supra*.

11 Such contentions were specifically rejected in Bradley Lumber Co. *v.* National Labor Relations Board, 84 F. (2d) 97 (C. C. A. 5); Clark *v.* Lindemann & Hoverson Co., 88 F. (2d) 59 (C. C. A. 7); Chamber of Commerce *v.* Federal Trade Commission, 280 Fed. 45 (C. C. A. 8); Heller Bros. Co. *v.* Lind, 86 F. (2d) 862 (App. D. C.); and Pittsburgh & W. Va. Ry. Co. *v.* Interstate Commerce Commission, 280 Fed. 1014 (App. D. C.). Compare United States *v.* Los Angeles & S. L. R. R. Co., 273 U. S. 299, 314; Lawrence *v.* St. Louis-San Francisco Ry. Co., 274 U. S. 588; Dalton Adding Machine Co. *v.* State Corporation Commission, 236 U. S. 699; McChord *v.* Louisville & Nashville Ry. Co., 183 U. S. 483; Richmond Hosiery Mills *v.* Camp, 74 F. (2d) 200, 201 (C. C. A. 5).

The cases cited by the Corporation are not opposed. Watson *v.* Sutherland, 5 Wall. 74; Pierce *v.* Society of Sisters, 268 U. S. 510; Walla Walla *v.* Walla Walla Water Co., 172 U. S. 1; Vicksburg Water Works Co. *v.* Vicksburg, 185 U. S. 65, 82; Hitchman Coal & Coke Co. *v.* Mitchell, 245 U. S. 229, 248; Pennsylvania *v.* West Virginia, 262 U. S. 553, 592, 593; City Bank Farmers Trust Co. *v.* Schnader, 291 U. S. 34; Truax *v.* Raich, 239 U. S. 33; Terrace *v.* Thompson, 263 U. S. 197, 215-16.

objection to the maintenance of the suit in point of jurisdiction and where it clearly appears that the decree was the result of an improvident exercise of judicial discretion.[12] Since the constitutionality of the Act has been determined by our decision in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, and the defect in the bill is incapable of remedy by amendment, its dismissal should be directed.[13]

Fifth. In No. 182, also, the Circuit Court of Appeals should have reversed the decree for a preliminary injunction and directed dismissal of the bill. The plaintiffs, officers of the so-called Plan of Representation of Employees, alleged, in addition to the facts already stated, that the employees are satisfied with their existing contracts of employment and desire to retain the existing Plan without change; that the holding of the proposed hearing will discredit the Plan and destroy its usefulness to the employees; that they will be deprived of their right to negotiate by the method of their choice, the value of which has been proved by years of operation; that alteration of the Plan will cause dissatisfaction among the employees; that operation of plant will be disrupted by labor disturbances; that employment will be interrupted; and that the damage to the employees will be irreparable. These additional allegations furnish no reason why the Board should be prevented from exercising the exclusive initial jurisdiction conferred upon it by Congress.

Decrees for preliminary injunction reversed with direction to dismiss the bills.

Mr. Justice CARDOZO took no part in the consideration or decision of this case.

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[12] Meccano Ltd. *v.* John Wanamaker, 253 U. S. 136, 141; Lawrence *v.* St. Louis-San Francisco Ry. Co., 274 U. S. 588 (*semble*); compare Prendergast *v.* New York Telephone Co., 262 U. S. 43, 50-51; National Fire Insurance Co. *v.* Thompson, 281 U. S. 331, 338; Alabama *v.* United States, 279 U. S. 229, 231; Rogers *v.* Hill, 289 U. S. 582, 587.

[13] Smith *v.* Vulcan Iron Works, 165 U. S. 518, 525; Mast, Foos & Co. *v.* Stover Mfg. Co., 177 U. S. 485, 494; Metropolitan Water Co. *v.* Kaw Valley Drainage Dist., 223 U. S. 519, 523; United States Fidelity & Guaranty Co. *v.* Bray, 225 U. S. 205, 214; Denver *v.* New York Trust Co., 229 U. S. 123, 136; compare In re Tampa Suburban R. R. Co., 168 U. S. 583, 588; Ex parte National Enameling and Stamping Co., 201 U. S. 156, 162; Meccano Ltd. *v.* John Wanamaker, 253 U. S. 136, 141.